

SEE RULE 102(1)**ARMED FORCES TRIBUNAL, KOLKATA BENCH**

T. A. NO. 33 of 2012
(Arising out of WP(C) No. 7816/2009)

THIS 30th DAY OF MARCH, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) Ex-Sgt Prasanna Kumar Patry,
 S/o Sri Rajendra Nath Patry,
 AT-Motel Chhak
 P.O./P.S./Dist. Bhadrak.

-versus-

RESPONDENTS

1. Union of India through Under Secretary,
 Ministry of Defence, Government of India,
 New Delhi.
2. Chief of Army Staff, Vayu Bhawan,
 New Delhi.
3. Air Officer-in-Charge Administration, Vayu
 Bhawan, New Delhi.
4. Secretary, Air Force Group Insurance
 Society, Air Force Station, Subroto Park
 New Delhi – 10.

For the Applicant(s) : Mr. Bisikesan Pradhan, Advocate

For the respondent(s) : Mr. D. K. Mukherjee, Advocate

ORDER

PER HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

The applicant had filed a writ petition being numbered as WP(C) No. 7816 of 2009 before the Hon'ble High Court of Orissa seeking relief for disability claim under Air Force Group Insurance Society (in short AFGIS) with effect from 01.07.2008 along with interest, which was transferred to this Tribunal for adjudication in view of Section 34 of the Armed Forces Tribunal Act, 2007 (in short AFT Act) and renumbered as T.A. 33 of 2012.

2. Brief facts as projected by the applicant are that the applicant was recruited in the Air Force on 01.07.88 as an Airman on being found fit after

statutory physical and medical tests. After serving various field units, while posted in Air Force Station, Raipura, he was detected Generalised Tonic Clonic Seizure on 20.03.2005. He was advised to undergo surgery on 16.06.2006 and after that he was down graded to Medical Category "C" (Temp) for six months from 01.01.2007. Thereafter, he was put on low medical category A4G4 (permanent) from 12.08.2007 by a duly constituted Release Medical Board (in short RMB) for the disability "Fibrillary Astrocytoma" with degree of disability 50% for life attributable to Air Force service. However, the applicant was allowed to complete his normal term of service and discharged from service on 30.06.2008. The applicant was not considered for further extension of service being in A4G4 medical category with 50% disability. He was given service pension and only AFGIS survival benefit, but disability claim under AFGIS was not given to him nor he was put to Invalidating Medical Board (in short IMB). According to the applicant, respondent No.4 is escaping from the liability of disability benefit/claim because of the illegality committed by the respondent Nos. 1 to 3 since they retained him in service till he completed his initial terms of engagement and discharged him from service in low medical category treating his disability attributable to air force service after convening a RMB, instead of invalidating him out of service by a duly constituted IMB. According to the applicant RMB be treated as IMB and Respondent No.4 be directed to release disability claim under AFGIS scheme.

3. The respondents No.1 to 3 have contested the case by filing counter affidavit. According to them, the applicant was discharged from service on completion of regular engagement and was released from service in low medical category A4G4. RMB was held on 14.11.2007 prior to his discharge from service for the disability Left Posterior Frontal Fibrillary Gr.II Astrocytoma (Optd.). The RMB assessed his disability at 50% for life and recommended the disability attributable to service. The case for grant of disability pension was taken up with the Pension Sanctioning Authority, i.e. AOC, AFRO for adjudication. The AOC, AFRO upheld the recommendation of the RMB and accepted applicant's disability attributable to service for grant of disability pension vide AFRO letter No. RO/3305/A/Med Cat(D) dated 17.12.2007. Accordingly, the disability

pension is being paid to the applicant. The applicant made representation dated 27.04.2009 for grant of disability claim under AFGIS scheme, which was replied by the AFGIS authority vide letter dated 29.05.2009 stating reasons for ineligibility. It is further case of the respondents that entire claim of the applicant was against respondent No.4 and they were impleaded unnecessarily.

4. Respondent No.4 also contested the case by filing counter affidavit. According to respondent No.4 the instant application is not maintainable since AFGIS is a Society registered under the Societies Act, 1860, it is neither a State nor instrumentality of State. It is the further case of the respondent that the applicant has been discharged from service on medical ground, but after completing his normal tenure. Therefore, in view of Para 17 of the AFGIS Scheme - 2005 the applicant is not entitled for disability claim and above prayer made by the applicant is devoid of merit.

5. We have heard the counsel for the parties and perused records.

6. Indisputedly, the applicant was discharged from service after completing his terms of employment, i.e. 20 years on medical ground. RMB was convened and having found his disability as attributable to service, he is being paid disability pension. It was also not in dispute that as per Regulation 179 of Pension Regulations, an individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement, if found suffering from a disability attributable to or aggravated by military service and recorded by the Service Medical authority, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element if the degree of disability is less than 20%. It is further not in dispute that applicant's discharge from service was not a premature retirement on medical ground, for which convening of IMB is a pre-requisite. However, so far as disability pension is concerned it is not only payable to armed forces personnel who is prematurely retired on medical ground, but also payable to such armed forces personnel who is discharged/retired from service on completion of his tenure; but certainly after completion of terms of engagement, applicant is not entitled for disability claim under AFGIS and therefore, RMB

cannot be treated as IMB in this context and above submission of Id. counsel for the applicant is without merit.

7. Moreover, the applicant's grievance is that though he was put on low medical category A4G4 (permanent) from 12.08.2007, that is before completion of his tenure, he was illegally allowed to complete his normal terms of service and thereby depriving him his disability claim under AFGIS scheme. Admittedly, the applicant is seeking relief under AFGIS scheme and his contention is that due to wrong committed by the respondent No. 1 to 3 he has been deprived of the above benefit. However, no provision of law has been brought to our notice by the applicant preventing respondents No.1 to 3 for allowing him to complete his tenure in such circumstances. Therefore, the above issue raised by the applicant, on the face, is devoid of merit.

8. Be that as it may, the applicant is claiming disability claim under AFGIS scheme. As per Para 17 of the Group Insurance Scheme – 2005 under AFGIS scheme disability benefit is available to an Airman who invalidated out of air force service by convening of IMB and is prematurely discharged on medical ground and not after completion of tenure on medical ground. Para 17, 18 and 19 of the above GIS-2005 are relevant for adjudication of this case which are reads thus :

*"17. **Disability benefit** : Member who is invalidated out of Indian Air Force by an IMB (NOT the RMB held at the time of retirement/release) on account of a disability, whether attributable to service or not, will be eligible for disability benefit at half the life insurance cover for 100% disability. The disability benefit will be reduced proportionately depending upon the percentage of disability. In case of disability of less than 20%, a member will not be eligible for any disability benefit. Disability benefit is in addition to accumulated balance of saving element, together with interest and bonus, payable on invalidment from service.*

18. Members invalidated out of Indian air Force due to reasons mentioned below will not be entitled to any disability benefit, irrespective of percentage of their disability :-

(a) Alcoholism

(b) Drug addiction

(c) Self inflicted injuries

(d) Disability as a result of attempted suicide

(e) Any disability arising out of intentional acts resulting in criminal conviction.

(f) Invalidment within one year of enrolment due to disability, which is not attributable to service.

19. No disability benefit is admissible if the individual with disability is retained in service till their completion of term of engagement, dismissal,

superannuation, release on own request or is released from service on his refusal to accept a change in Branch / Trade."

The language of the above clauses are plain and unambiguous, according to which no disability benefit under AFGIS scheme is admissible if an individual is retained in service till completion of his terms of engagement. It is settled rule of interpretation that the terms of contract have to be construed strictly. It is not permissible for the court to substitute the terms of the contract itself, under the grab of construing terms incorporated in the agreement of insurance. No exceptions can be made on the ground of equity. The liberal attitude adopted by the court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement. The endeavour of the court should always be to interpret the words used in the contract in the manner that will best express the intention of the parties [please see Export Credit Guarantee Corporation Vs. Grag Sons International reported in (2014) 1 SCC 686 and United India Insurance Co. Ltd. Vs. Orient Treasures Pvt. Ltd. Reported in (2016)3 SCC 49].

Indisputedly, the applicant was retained in service till completion of his terms of engagement and therefore, in this view of the matter also he is not entitled for grant of the aforesaid benefit.

9. During the course of argument Mr. Bisikesan Pradhan, Id. counsel for the applicant referring to Air Force Order issued by Air Headquarters dated 13.08.1999 (annexure Y to the supplementary counter affidavit of respondent No.1 to 3) has also submitted that as per above order on completion of initial terms of engagement an airman **may** be granted extension of engagement for a further period of six years to complete 26 years' of regular service subject to general principles explained in Para 3 and 4 of the said order. The above clause is mandatory and extension of tenure was certain and the meaning of word "**may**" occurring in the above clause has to be read as "**shall**" and applicant's discharge on medical ground after completion of initial terms of engagement is required to be treated as premature discharge on medical ground and he is entitled for disability claim under the AFGIS scheme.

10. In order to appreciate the argument of Mr. Pradhan, Para 3 and 4 of the above order are reproduced below :

"3. This policy has been formulated to ensure that only those airmen who meet the minimum criteria are allowed to extend their engagement. An airman who is consistent in his overall performance may be granted extension of engagement, which is governed by the following principles:-

- (a) Service Requirement.*
- (b) Willingness for Extension of Engagement.*
- (c) Medical Fitness.*
- (d) Passing of Promotion Examinations.*
- (e) Conduct Records.*
- (f) ACR/Assessment for the Last Five Years.*
- (g) Suitability for Extension.*
- (h) Certificate of Undertaking (CoU).*

4. The principles are explained below :-

*(a) **Service Requirement** Extension of service beyond the initial term of engagement can not be claimed as a matter of right. It shall be the discretion of Air HQ or such other authority, as may be specified by Air HQ, to grant or deny extension of service. Grant of extension or its denial shall depend on the requirements of the service and also the suitability of the airmen seeking such extension.*

*(b) **Willingness to Extend** Airmen willing to extend their engagement beyond 20 years shall submit Willingness Certificate as per Appendix 'A' to this AFO. Airmen not willing to extend their engagement shall submit their Unwillingness Certificate as per Appendix 'B' to this AFO. Willingness/Unwillingness Certificate must reach AFRO 18 months before expiry of Regular Engagement(RE). It shall be mandatory for all airmen to submit their willingness or unwillingness within the stipulated time schedule. An option once exercised will be treated as final and requests for change of option will not be entertained except under very exceptional and extreme compassionate grounds. Those airmen who do not submit any option will be deemed to be unwilling for further extension of engagement and no request for grant of extension will be subsequently entertained by AFRO. Accordingly AOIC AF Records will authorise discharges of airmen who do not submit any option within the stipulated time alongwith those who have submitted unwillingness (Appendix 'B') as per expiry of their engagements. No reminders will be issued by AFRO and it will be the responsibility of the airman concerned to exercise his willingness/unwillingness by the due date and of the Unit Adjutant to forward it to AFRO (OIC Recording Wing) through the concerned Command HQs.*

*(c) **Medical Fitness** Airmen seeking extension of engagement will be medically examined as explained below :-*

(i) Those in medical category AYE & BEE will present themselves before SMO/UMO for medical examination and obtain their medical fitness on AFMS(F)2A as laid down vide para 4.3.3 IAP 4303.

(ii) Those not in medical category AYE & BEE are also to present themselves before SMO/UMO to obtain their medical fitness on AFMS (F) 15 as per para 4.4.58 IAP 4303.

(iii) Airmen who are found medically unfit for duties of their trade, but seek extension of service may be offered remustering to lower or allied trades for which they are considered suitable. For this they shall be required to submit willingness as per Appendix 'C' or 'D' to this AFO as applicable. Those airmen who are not willing to remuster to the trades so offered will be discharged. A Certificate to this effect is to be submitted as per Appendix 'E' to this AFO.

(iv) Airmen placed in medical category CEE(P) may be considered for grant of extension of engagement if they are fit to perform the duties of their trade provided they meet all other conditions. However, cases for extension of engagement in respect of such airmen will be considered by

a Condonation Board consisting the following members on case to case basis:-

- (aa) AOIC, AF Records
- (ab) Medical Adviser , AF records
- (ac) O i/c Recording Wing, AF Records
- (ad) O i/c Career Planning Wing, AF Records

(v) The proceedings of Condonation Board mentioned in sub-sub-para (iv) above will be approved by ACAS(PA&C).

(vi) Refusal to undergo medical examination/review by a duly constituted medical board will amount to disobedience of lawful command and would be punishable under the AF Act.

(d) **Passing of Promotion Examination.** Extension of engagement will be granted only to those airmen who have passed all parts of their promotion

examinations which make them eligible for promotion to their next higher rank. However, those airmen who have already appeared at promotion examinations before submission of their applications for grant of extension or those who are likely to appear at such promotion examinations which will make them eligible for promotion to the next higher rank may be considered for grant of extension of engagement if they pass the promotion examinations three months prior to the expiry of their regular engagement.

Airmen who do not attain the rank of Cpl within 15 years will be discharged by AOIC AF Records vide para 12(a) (i) of AFI 12/S/48 as amended by AFI 21/79.

(e) **Conduct Sheet.** Extension of engagement will be granted to airmen who are suitable for retention and amenable to service discipline. Airmen who have been declared as habitual/potential habitual offenders will not be granted extension of engagement, except if they have not incurred any Red/Black Ink entry in the preceding eight years of their current RE expiry. However, grant of extension of engagement in respect of airmen who have not been categorised/declared potential/habitual offenders but have incurred one Red Ink or two Black Ink entries in the preceding five years of the expiry of their current RE will be considered on individual merits.

(f) **ACR & Assessment.** For the purpose of grant of extension, annual assessments and/or his assessment in confidential reports during the last five years will be considered. An airman who has secured an average of 60% or above marks in his assessment/confidential reports shall be eligible for grant of first extension of engagement subject to his fulfilling other conditions as laid down in this AFO. For the second and subsequent spells of extension of engagement, the airmen will have to score the following minimum percentage :-

- (i) Sgt 70%
- (ii) JWO 72.5%
- (iii) WO/MWO 75%

Note :- The rank actually held by the airmen during the last five years will be taken into consideration while arriving at the minimum average ACR/assessment marks.

(g) **Suitability for Extension.** An airman seeking extension of his engagement, will submit his application as per Appendix `A' to this AFO, with Part I, II & III duly completed, for further action as given below :-

(i) **By Specialist Officer.** The specialist officer will render opinion in Part IV of the application regarding employability of the airmen, including those who are placed in Low Medical Category, regarding the performance of the specific duties of their trade(s) in the present and in the next higher rank, with suggestions for remustering where considered necessary. Even in the event of an airman working in a section not related to his trade, specialist officer is to fill up Part IV of the application. The airman should have served for a minimum of five months under the officer giving the recommendations or the same is to be obtained from the previous officer. If, due to any contingency, this is not feasible, the unit concerned may wait for a period of three months so as to watch the

performance of the individual concerned before forwarding the recommendations.

(ii) **By Commanding Officer** AOC/CO of the airmen will make his recommendations on Part V of the application regarding their suitability. He is to give his remarks keeping in view the individual's performance and the opinion of the specialist Officer.

(iii) **Justification Report** Justification report, in a narrative form, is invariably required in the following cases to reach AFRO 12 months before expiry of Regular Engagement (RE):-

(aa) Change of option by the airmen.

(ab) Where applications for extension of engagement are not likely to reach AFRO within 18 months due to various factors such as non-receipt of documents on posting, hospitalisation, long leave, etc.

(ac) Cases where an airman fulfils all the conditions mentioned in sub paras (a) to (g) of para 4 above but the specialist officer or AOC/OC has not recommended extension of engagement.

Note:- AOCs/COs are to satisfy themselves that the personnel have not deliberately attempted to exercise the change of option for the purpose of cancellation of posting or for prolonging their stay at a particular place.

(h) **Certificate of Undertaking (CoU)** : Airmen who proceed abroad for course or on deputation or on posting and those who are detailed for special courses in India are to give Certificate of Undertaking(CoU) to serve for specific/extended period of engagement for reasons of having undergone courses in India/Abroad or having been posted to foreign countries etc. Such CoU must invariably be submitted alongwith applications for extension of engagement for a period till the date of their next 'Due RE' even if it exceeds the prescribed period of Undertaking as extension of engagement could be granted only for a period of 06 years or 03 years as explained in Para 2 above. Copies of such applications must be forwarded to AFRO(O i/c Recording Wing) immediately.

From a conjoint reading of the above clauses it is manifestly clear that an employee cannot claim extension of service beyond initial term of engagement as a matter of right. Further, Airmen willing to extension of their engagement more than 20 years are required to submit application for extension of engagement showing willingness/option as per Appendix - A to the above order. Whereas, as per additional supplementary affidavit filed on behalf of the respondent Nos. 1 to 3, we find that the applicant did not exercise option, that is, either willing or not willing for further extension of service beyond his initial terms of engagement. Para 3 of the above additional supplementary affidavit-in-opposition is extracted below :

"(a) The air warrior did not exercise option that is either willingness or unwillingness for further grant of extension of service beyond his initial period of engagement i.e. 30.06.2008.

(b) Since the Senior Non-commissioned Officer did not exercise his option for grant of extension of service beyond regular engagement expiry 30.06.2008 his case was treated as unwillingness for extension of service in terms of then AFO 11/99 governing the terms and condition of grant of extension . Subsequently he was discharged from service on 30.06.2008 under the clause "on fulfilling the conditions of enrolment and transfer to reserve for 02 years."

Besides above, certain other conditions necessary for grant of extension are also required to be fulfilled as mentioned in Para 3 of the above Air Force order. From the above, it is clear that extension of service beyond initial terms of engagement cannot be claimed as a matter of right and is discretionary. The competent authority is free to consider circumstances of each case before grant of extension and the word "may" occurring in Clause-3 cannot be read as "shall", in the facts and circumstances of the case. Therefore, on this count also the argument advanced by the Id. counsel for the applicant is devoid of merit.

11. At this juncture, Mr. Pradhan, Id counsel for the applicant tried to take shelter in support of his claim of the order of this Tribunal dated 15.09.2013 passed in O.A. 100/2012. However, this decision is of no help to the applicant, inasmuch as in the cited case the applicant's discharge on medical ground was premature discharge. Looking to applicant's premature retirement, this Tribunal granted him disability pension as well as benefit of disability claim under AFGIS scheme. It is not the case here, inasmuch as in this matter the applicant has been discharged after completion of initial terms of engagement and his service was not extended. That is all. Therefore, the facts and circumstances of the case cited by the Id. counsel for the applicant is not applicable to the instant case.

12. Though the question of maintainability of the application before this Tribunal has been raised by the respondents in their affidavit-in-opposition, the same was not argued by them and therefore is not considered by us.

13. For the reasons mentioned above, the instant application for grant of disability claim under AFGIS scheme being devoid of merit is liable to be and is hereby dismissed.

14. Original record produced by the respondents before the court be returned to them on proper receipt and till such time the same be kept in the safe custody of the Registry.

15. Plain copy of this order be supplied to the parties after observing usual formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice N.K. Agarwal)
Member (Judicial)